
(2000) 11 PAT CK 0028
In the Patna High Court
Case No : C.W.J.C. No. 2381 of 1985

Sheo Narayan Yadav

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-11-2000

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 16(3)

Citation : (2000) 3 BLJR 2354 : (2001) 1 PLJR 150

Hon'ble Judges : S.K. Chattopadhyay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Chattopadhyay, J.—In this application, the petitioner has prayed for quashing the order as contained in Annexures-4, 6 and 8 passed by different authorities under Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the "Act").

2. Deceased respondent No. 5 (whose heirs have been subsequently substituted in this Court) had filed a petition claiming pre-emption in respect of survey plot No. 713, an area of 1 bigha, 1 katha, 8 dhurs and 10 dhurid of land under Khata No. 70 recorded in the name of the transferor, respondent No. 6. The petitioner purchased the said land from respondent No. 6 on 19.12.1975. When respondent No. 5 filed the case u/s 16(3) of the Act, an objection was raised that he was an adjoining Raiyat as co-sharers in plot No. 712 along with Ashutosh Yadav and Uday Narain Yadav and the petitioner has no right to claim pre-emption. Ashutosh Yadav and Uday Narain Yadav are said to have sworn affidavits contending that the petitioner is a member of a joint family and is in possession of the adjacent plot No. 712. However, the Land Reforms Deputy Collector, considering the documents available before him, has come to the conclusion that respondent No. 5 was entitled to claim pre-emption and, thus, allowed his prayer. The said order is Annexure-4.

3. Being aggrieved, the petitioner moved in appeal before the appellate Court but without success. The order of the appellate Court is Annexure-6. Petitioner took the matter to revisional Court before Member, Board of Revenue (respondent No. 2) but before him also, petitioner did not get relief as his petition was dismissed.

4. Learned Counsel for the petitioner urged that when there was a dispute between the portion regarding the status of the petitioner vis-a-vis respondent No. 5, L.R.D.C. should have held spot inquiry, if necessary for deciding the said dispute. In support of his contention, he has relied upon a decision in the case of Moghal Singh and Ors. v. Member, Board of Revenue and Ors. 1981 B.L.J. 91.

5. Learned Counsel for respondent No. 5, however, contends that as respondent No. 5 was an adjacent Raiyat of the land in dispute, there was no question of spot inquiry because all the three authorities were satisfied.

6. Almost in similar circumstance, when both parties were claiming to be adjoining Raiyats to the plot in question, the Division Bench in the case of Moghal Singh and Ors. (supra) was of the view that the authorities deciding the pre-emption matter being creation of that Statute have to function within the four corners of that Statute. Obviously, therefore, unless the Statute specifically bestows such power on them, they cannot assume the powers of a Civil Court and hold that the sale-deed is not what, is mentioned in the deed but something else. The Revenue authority has merely to investigate, if there has been a transfer of the land after the commencement of the Act to any person other than the co-sharers or a Raiyat of adjoining land for which purpose he can, in appropriate circumstances, hold spot inquiry also. In the present case, I find that the learned L.R.D.C. has merely noted the submission of the parties and on consideration of the records concluded that respondent No. 5 is an adjoining Raiyat and the petitioner knowingly or otherwise is not adjoining Raiyat because the name of Ashutosh Yadav has been mentioned on the east of the disputed land. He has perused the affidavits filed by Uday Narain Yadav but has refused to rely on the ground that the facts mentioned in the registered deed No. 6414 dated 29.04.1976 should be given priority. He also rejected the prayer of the petitioner for spot inquiry. On these findings, he has allowed the petition filed by respondent No. 5.

Before the appellate authority though the petitioner-appellant appeared but none appealed for respondent No. 5. The petitioner contended before the authority that even though he is not adjoining Raiyat but his relatives are admittedly adjoining Raiyats who are co-sharers. The appellate Court on this account observed that Ashutosh Yadav cannot be taken to be a member of the family of the appellant. Thus, he dismissed the appeal. Revisional Court also affirmed the findings of the L.R.D.C. and the (appellate) Court by dismissing the revision.

7. In my view, when the petitioner specifically asserted before the authorities that in south of the disputed land, petitioner is there and on east Ashutosh has ancestral land along with the petitioner, to resolve the disputes the L.R.D.C.

ought to have held a spot inquiry. If necessary, the authority could have asked for oral evidence on the limited question but surely while holding such inquiry, it will not go into the question of title between the parties. This aspect of the matter as to who is the real adjoining Raiyat of the land in dispute has not been considered by any of the Courts below. Under these circumstances, these three orders cannot be sustained in law.

8. In the result, this application is allowed. The orders dated 14.09.1977, 29.05.1984 and 09.05.1985, as contained in Annexures-4, 6 and 8 are set aside and the matter is sent back to the L.R.D.C. to proceed in accordance with law and observations made above.